

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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CC:CORP:B05

PLR-134643-07

Date:

September 20, 2007

### LEGEND

Parent =

Sub1 =

Sub2 =

StateA =

Year =

DateA =

DateB =

Parent Official-1 =

Parent Official-2 =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated July 27, 2007, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as the "Election"), effective for the Year taxable year. Additional information was received in a letter dated August 3, 2007. The material information is summarized below.

Parent is a general partnership formed on DateA under the laws of StateA. Parent has elected to be treated as a corporation for Federal income tax purposes filing a Form 8832 Entity Election effective on the date of formation. Parent, as of the end of Year, directly held all the stock in a domestic subsidiary (Sub1) and this subsidiary directly held all the stock in a second domestic subsidiary (Sub2).

An election under § 1.1502-75(a)(1) for the Parent affiliated group to file a consolidated return for the Year was due on DateB. However, for various reasons, a valid Election was not timely filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) of the Code has not expired for Parent's, Sub1's or Sub2's taxable years for which they wish to make the Election or for any taxable year that would be affected by the Election had it been timely filed.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic

extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and its subsidiaries to file the Election, provided Parent and its subsidiaries acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent, Parent Official-1, Parent Official-2, and Tax Professional explain the circumstances that resulted in the failure to timely file the election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent and its subsidiaries have shown they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent and its includible subsidiaries to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each of the subsidiaries) for the Year taxable year.

The above extension of time is conditioned on the taxpayers' (Parent's and its subsidiaries') tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

#### CAVEAT

We express no opinion as to whether, in fact, Parent and its subsidiaries qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or any other tax consequences of filing the return or the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the

return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Parent Official-1, Parent Official-2, and Tax Professional. However, the appropriate Service office should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter, including whether or not (or when) Parent's election to be taxed as a corporation was effective.

#### PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-134643-07) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Ken Cohen*

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)